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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-9889

EXAMINER	
HO, CHUONG T	

ART UNIT	PAPER NUMBER
2664	

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/599,736	STRANDBERG ET AL.	
	Examiner	Art Unit	
	Chuong Ho	2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 May 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The amendment filed 09/16/03 have been entered and made of record.

2. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-9, 10-18, 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox (U.S.Patent No. 6,567,382 B1) in view of Pashtan et al. (U.S.Patent No. 6,542,466 B1).

In the claim 1, see figure 1, Galand et al. discloses each switching nodes 101-104 (routers) comprises: for classifying each of the plurality of connections as red or green depending on whether each connection transmits excess traffic or not, so as to achieve a behaviour classification of plurality of connections (see col. 3, lines 9-12); for determining for each connections a priority class indicative of the quality of service requested by each connection (see col. 3, lines 20-22); a different weight could be assigned to connections of a same priority class (see col. 7, lines 14-15) comprising:

Determining an operating condition at a first router (see col. 3, lines 5-60).

However, Galand et al. is silent to disclosing propagating an indication of operating condition at first router to a second router.

See figures 4, Pashtan et al. Discloses communication network 300 includes a plurality of network elements 422, 421, 412 (routers)...Each network element may have an internal traffic conditioning control. Such internal control may be performed by interconnection of one or more blocks such as a classifier for classifying an ingress data packets, a meter for measuring performance, a marker for marking the data packets, and shaper and dropper to shape the data traffic flow according to a profile (see col. 2, lines 52-55); comprising:

Propagating an indication of operating condition at first router (422) to a second router (412) (see col. 5, lines 9-10, network element 422 may communicate to network element 412 via connections 450 in order to inform network element 412 of a request for change of communication traffic flow priority) (see col. 6, lines 10-12, each network element acting as a router has access to a resident table of the DiffServ classes of service. This table is usually the same across all the routers of the DiffServ domain);

A system of operating a differentiated service network (see col. 6, lines 33-35, as the network is rapidly changing states, backward propagation of request to decrease a DiffServ priority may be met by an upstream network element and the reassigned micro communication flow may then met the QoS objective at the network element where the congestion was originally detected).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Galand with the teaching of Pashtan to propagate an indication of operating condition at first router to a second router in order to control congested condition.

4. In the claims 2, 12, 27, Pashtan discloses first router (412) comprises a core router and second router (422) comprises an edge router (see figure 4, communication network 300 includes a plurality of network elements 422, 421, 412 (routers)...Each network element may have an internal traffic conditioning control. Such internal control may be performed by interconnection of one or more blocks such as a classifier for classifying an ingress data packets, a meter for measuring performance, a marker for marking the data packets, and shaper and dropper to shape the data traffic flow according to a profile (see col. 2, lines 52-55)).

5. In the claims 3, 13, 21, Pashtan discloses determining an operating condition at a third router (421); and propagating an indication of operating condition at third router to second router (412) (communication network 300 includes a plurality of network elements 422, 421, 412 (routers)...Each network element may have an internal traffic conditioning control. Such internal control may be performed by interconnection of one or more blocks such as a classifier for classifying an ingress data packets, a meter for measuring performance, a marker for marking the data packets, and shaper and dropper to shape the data traffic flow according to a profile (see col. 2, lines 52-55)).

6. In the claims 4, 14, 24, Pashtan discloses operating condition comprises a status of stability (see col. 6, lines 33-35, as the network is rapidly changing states, backward propagation of request to decrease a DiffServ priority may be met by an upstream network element and the reassigned micro communication

flow may then met the QoS objective at the network element where the congestion was originally detected).

7. In the claims 5, 15, 25, 26, Galand discloses indication comprises a signal corresponding to a network traffic status (see col. 3, lines 10-55).

8. In the claims 6, 16, Galand discloses network traffic status is represented by a color (see col. 3, lines 10-55).

9. In the claims 7, 17, Pashtan discloses second router (network element 422, 412, 421) making a profile change recommendation to a network operator (the network management element 330) (see figure 3, col. 5, lines 9-11).

10. In the claims 8, 9, 17, 18, 22, 23, Pashtan discloses second router renegotiating a constraint of network (see col. 1, lines 48-50).

11. In the claim 11, 10, 20, 19, see figure 1, Galand et al. discloses each switching nodes 101-104 (routers) comprises: for classifying each of the plurality of connections as red or green depending on whether each connection transmits excess traffic or not, so as to achieve a behaviour classification of plurality of connections (see col. 3, lines 9-12); for determining for each connections a priority class indicative of the quality of service requested by each connection (see col. 3, lines 20-22); a different weight could be assigned to connections of a same priority class (see col. 7, lines 14-15) comprising:

Determining an operating condition at a first router (see col. 3, lines 5-60). However, Galand et al. is silent to disclosing propagating an indication of operating condition at first router to a second router.

See figures 4, Pashtan et al. Discloses communication network 300 includes a plurality of network elements 422, 421, 412 (routers)...Each network element may have an internal traffic conditioning control. Such internal control may be performed by interconnection of one or more blocks such as a classifier for classifying an ingress data packets, a meter for measuring performance, a marker for marking the data packets, and shaper and dropper to shape the data traffic flow according to a profile (see col. 2, lines 52-55); comprising:

Propagating an indication of operating condition at first router (422) to a second router (412) (see col. 5, lines 9-10, network element 422 may communicate to network element 412 via connections 450 in order to inform network element 412 of a request for change of communication traffic flow priority) (see col. 6, lines 10-12, each network element acting as a router has access to a resident table of the DiffServ classes of service. This table is usually the same across all the routers of the DiffServ domain);

A system of operating a differentiated service network (see col. 6, lines 33-35, as the network is rapidly changing states, backward propagation of request to decrease a DiffServ priority may be met by an upstream network element and the reassigned micro communication flow may then met the QoS objective at the network element where the congestion was originally detected).

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Galand with the teaching of Pashtan to propagate an indication of operating condition at first router to a second router in order to control congested condition.

Double Patenting

12. Claim 1 is rejected under the judicially created doctrine of double patenting over claim 10 of U. S. Patent No. 6,647,412 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: determining an operating condition at a first router (see claim 10, col. 9, line 65); propagating an indication of operating condition at first router to second router (see claim 10, col. 9, lines 66-67).

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

13. Claim 10 is rejected under the judicially created doctrine of double patenting over claim 10 of U. S. Patent No. 6,647,412 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: receiving an indication of an operating condition at a first router (see claim 10, col. 9, line 65, obtaining status

information at first edge node); adjusting at least one parameter of a constraint based on indication of operating condition (see claim 10, col. 10, lines 1-2, updating first status message based on status information at first core node, see claim 18, col.10, lines 38-40) Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

14. Claim 14 is rejected under the judicially created doctrine of double patenting over claim 10 of U. S. Patent No. 6,647,412 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a first router; and first router being associated with a first entity to determine an operating condition at the first router (see claim 10, col. 9, line 65); a second router coupled to first router (see claim 10, col. 9, lines 66-67).

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

15. Claim 2 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S.Patent No. 6,647,412 (see claim 10, col. 9, lines 66-67).

16. Claims 3 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S.Patent No. 6,647,412 (see claim 14, col. 10, lines 22-24).

17. Claims 5 ,4, 14, 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15 of U.S.Patent No. 6,647,412 (see claim 15, col. 10, lines 31-33).

18. Claim 11 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S.Patent No. 6,647,412 (see claim 10, col. 9, lines 65-67).

19. Claim 12 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S.Patent No. 6,647,412 (see claim 10, col. 9, lines 66-67).

20. Claims 13, 21 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S.Patent No. 6,647,412 (see claim 14, col. 10, lines 22-24).

21. Claim 20 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S.Patent No. 6,647,412 (see claim 10, col. 9, lines 65-67).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuong ho whose telephone number is

(571)272-3133. The examiner can normally be reached on Monday-Friday from 8:00AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10/22/04